Supreme Court, U.S.
FILED

021804 JUN 12 2003

No.

IN THE

SUPREME COURT OF THE UNITED STATES

ROBERT E. MEADE,

Petitioner,

v.

PATRICIA A. MILLER, SUCCESSOR PERSONAL REPRESENTATIVE OF THE ESTATE OF HELEN V. MEADE, et al.

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

PETITION FOR WRIT OF CERTIORARI

ROBERT E. MEADE
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40 pp

QUESTIONS PRESENTED

Whether both the Circuit Court and the Orphans' Court of Maryland for Anne Arundel County abused their discretion in denying the Petitioner his procedural due process rights?

Whether the Court of Special Appeals of Maryland erred in determining, as did the Circuit Court of Maryland for Anne Arundel County, that the decisions, judgments, and orders issued by the Orphans' Court of Maryland for Anne Arundel County were not final and were not appealable?

Whether the Court of Special Appeals of Maryland erred in remanding a case back to the trial court where the Petitioner could not receive a fair and impartial trial?

PARTIES TO THE PROCEEDING

The parties to the proceeding below are the Petitioner, Robert E. Meade, and the Respondents, Patricia A. Miller, Esquire, Successor Personal Representative of the estate of Helen V. Meade, and her attorney, Walter S. B. Childs, Roger K. Meade, and his attorney, Joel L. Katz.

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PETITION FOR WRIT OF CERTIORARI

The Petitioner, Robert E. Meade, respectfully requests that a writ of certiorari issue to review the order of the Court of Appeals of Maryland.

OPINIONS BELOW

The Court of Appeals of Maryland issued an Order denying reconsideration of petition dated March 14, 2003. (App. A) The Court of Appeals of Maryland issued an Order denying petition on December 23, 2002 (App. B) The Court of Special Appeals issued an Order denying reconsideration. (App. C) The Court of Special Appeals issued an Unreported Opinion on August 26, 2002 (App. D) The Circuit Court of Maryland for Anne Arundel County issued an Order dismissing the Notice of Appeal. (App. E)

JURISDICTION

The reconsideration of the Order of the Court of Appeals of Maryland was denied on March 14, 2003. The Order of the Court of Appeals of Maryland denying the petition was entered on December 23, 2002. The jurisdiction of the United States Supreme Court to review these Orders is invoked under 28 U.S.C. § 1257(a).

STATEMENT OF THE CASE

On December 13, 1999, Helen V. Meade died as a result of the injuries she sustained in a traffic accident. She was survived by two sons, Robert E. Meade, the Petitioner, and Roger K. Meade. The decedent left a last will and testament and she named her sister, Juanita Hundley, as the Personal Representative. Almost immediately the Personal Representative, Juanita Hundley, Roger K. Meade, his family and a friend, and other relatives came to the decedent's and the Petitioner's home and went through the home, ransacking the possessions of the decedent and that of the Petitioner. This occurrence took place on various occasions without the presence of the Petitioner since they all had keys. They began the distribution of the decedent's personal items and took some items, without adhering to the last will and testament of the decedent.

The Orphans' Court of Maryland for Anne Arundel County appointed Juanita Hundley the Personal Representative of the estate of Helen V. Meade and Thomas J. Aversa, Jr. the resident agent. The Petitioner at this time was concentrating on trying to find out exactly what happened at the automobile accident which caused the death of his mother. The Petitioner encountered obstacles and resistance from the Personal Representative and her attorney. The Respondents refused to provide any information dealing with the medical reports, the witnesses to the accident, and the automobile insurance information. The Respondents were disposing the assets of the estate, were mismanaging the estate, and were not protecting the assets of the estate. The Petitioner was forced to file a Notice of Objection to the Appointment of Proposed Personal Representative, a Petition for Removal of Personal Representative, and a Petition for Order Restraining Personal Representative. The Petitioner also filed a Notice of Objection to the Appraisal of the Estate. Upon the filings of the Petitioner, the Orphans' Court of Maryland for Anne Arundel County limited the powers of the Personal Representative and her attorney. The

Respondents filed several motions to rescind the restraining order but the attempts failed.

On April 6, 2001, the Respondents filed a Motion by Personal Representative, Juanita Hundley, for Authorization to Sell Real Property. The Petitioner filed his Answer to this Motion objecting to the sale because the Orphans' Court of Maryland for Anne Arundel County had limited the powers of the Personal Representative, the Petitioner had noted an objection to the appraisal, and other issues were still pending waiting to be heard at a hearing. Also, the Petitioner, having lived with his mother, wanted to keep the house and the estate would benefit in allowing him to buy the house since there would be substantial savings in realtor's commission fees.

Despite the objections made by the Petitioner, the Orphans' Court of Maryland for Anne Arundel County on May 1, 2001 rescinded the Order restraining the Personal Representative and ordered that the real property be sold. The Petitioner appealed the Orphans' Court's Order to the Circuit Court of Maryland for Anne Arundel County requesting a review de novo and a trial by jury.

Thomas J. Aversa, Jr., attorney for the Personal Representative and Respondent, through Joel L. Katz, attorney for the other heir, Roger K. Meade, issued subpoenas for depositions to be held on at the offices of Joel L. Katz. Prior to the depositions, Joel L. Katz was notified that both the Petitioner and the other deponent would not be present with reasonable grounds. Joel L. Katz had mistreated and harassed the deponents. His unprofessional behavior not only towards the Petitioner, but the other opponent, prompted the other deponent to hire an attorney to protect her from the abuses of Joel L. Katz. Joel L. Katz then filed a Motion to Compel Deposition Testimony asking for attorney's fees, client's fees, and other fees assessed by this Motion in the amount of $2,500.00 for attorney's fees and $500.00 for client's fees and other fees against the deposition. The Orphans' Court of Maryland for Anne Arundel County held a hearing where the Respondents, who

were represented by attorneys, were allowed to speak freely and the Petitioner, pro se, was barred from speaking freely. The Respondents, with the advantage, were able to inject a substantial amount of falsehoods and character assassinations against the Petitioner without the input of the Petitioner. As the result of this hearing, the Orphans' Court awarded Joel L. Katz the total of $3,000.00 to be paid by the Petitioner. The Petitioner then filed a Notice of Appeal to the Circuit Court for Anne Arundel County for a de novo trial by jury.

The Circuit Court for Anne Arundel County, instead of ordering a scheduling hearing set the trial date for September 26, 2001. The Respondents filed a Motion to Dismiss and the Petitioner filed his Answer to the Motion to Dismiss. A hearing on the Motion to Dismiss was scheduled for August 30, 2001. The Petitioner was unable to appear since he was still very ill and had laryngitis. Both attorneys as well as the Court were informed of this prior to the hearing by a friend of the Petitioner. With the Petitioner unable to appear, the Circuit Court Judge, Judge Lerner, dismissed the Notice of Appeal filed by the Petitioner with costs and granted counsel fees in the amount of $500.00 to be paid to Thomas J. Aversa, Jr. and $500.00 to be paid to Joel L. Katz by the Petitioner. The Petitioner then appealed this decision to the Court of Special Appeals of Maryland.

REASONS FOR GRANTING THE PETITION

The Petitioner files his Petition to the Supreme Court of the United States within the required ninety (90) days and his case presents an issue which is appropriate for review by this Court.

The Supreme Court has jurisdiction to issue a writ of certiorari in this matter. The Petitioner's case is a case involving constitutional principles. Therefore, review by this Court is appropriate under 28 U.S.C. § 1257 (a) that allows this Court to review "{f}inal judgments or decrees rendered

by the highest court of the State in which a decision could be had...where any title, right, privilege, or immunity is specially set up or claimed under the Constitution".

The Orphans' Court of Maryland for Anne Arundel County has proceeded in a manner unlike any other probate court. The Supreme Court should review the Petitioner's case in light of the structural and procedural errors of the Orphans' Court of Maryland for Anne Arundel County and the Circuit Court of Maryland for Anne Arundel County. Both Courts denied the Petitioner due process.

At the motion hearing, the Orphans' Court of Maryland for Anne Arundel County denied the Petitioner, pro se, from speaking and presenting his objections and allowed the Respondents ample time to speak injecting substantial false statements and character assassinations against the Petitioner. The Orphans' Court allowed Joel L. Katz, Esquire, to monopolize the hearing by speaking constantly and lodging false accusations at the Petitioner without allowing the Petitioner to respond. Thomas J. Aversa, Jr., the attorney for the Personal Representative, also lodged false accusations against the Petitioner and the Petitioner was not allowed by the Orphans' Court to respond. This was the result of the Orphans' Court's displeasure of the Petitioner appearing without an attorney. The Orphans' Court should have treated the Petitioner as the Respondents even though the Petitioner was not an attorney. Both Joel L. Katz, Esquire, and Thomas J. Aversa, Jr., Esquire, presented false statements to the Orphans' Court so as to further prejudice the Orphans' Court against him. The Supreme Court stated in Mullane v. Central Hanover Bank & Trust Co, 339 U.S. 306, 70 S. Ct. 652, 94 L. Ed 865

> "[D]ue process requires that a State provide notice reasonably calculated, under all the circumstances, to appraise interested parties of the pendency of the action and offer them the opportunity to present their objections. U.S.C.A. Const Amend 14 In estate matters, the Court of Special Appeals cited the case, Durham v. Walters, 59 Md. App 1, 474

A. 2d 523 (1984)".

The Orphans' Court of Maryland for Anne Arundel County did not provide the Petitioner with a fair and just hearing. At the Motion To Dismiss hearing, the Orphans' Court of Maryland for Anne Arundel County allowed the opposing attorneys to speak freely yet denied the Petitioner, pro se, from speaking freely. By proceeding in this manner, the Orphans' Court of Maryland for Anne Arundel County did not provide the Petitioner the right to be heard yet provided the Respondents the right to be heard. The Orphans' Court did not provide the Petitioner a fair and just hearing. "The right to be heard before being condemned to suffer grievous loss of any kind, even though it may not involve the stigma and hardships of a criminal conviction, is a principle basis to our society" Joint Anti-Fascist Com. v. McGrath, 341 U.S. 123, 168 (1951)

The Petitioner appealed the decisions, judgments, and orders of the Orphans' Court of Maryland for Anne Arundel County to the Circuit Court of Maryland for Anne Arundel County for a "de novo" trial by jury. The Circuit Court of Maryland for Anne Arundel County dismissed the appeal for the Petitioner's failure to appear at a hearing on a Motion To Dismiss filed by the Respondents. The Circuit Court of Maryland for Anne Arundel County had refused to grant the Petitioner a continuance due to his illness. The Petitioner's failure to appear was neither willful nor voluntary. This is not a case involving the type of deliberate and pervasive misconduct required to justify granting a Motion to Dismiss. Under these circumstances, the trial judge should have suspended operation of the dismissal. "Whether discretion to grant or refuse a continuance is abused depends upon whether it is exercised in the furtherance of justice, and, if it serves to delay or defeat justice, it may well deemed an "abuse of discretion". Potomac Small Loan Co. v. Myles, 34 A. 2d 609

Both the Orphans' Court and the Circuit Court of Maryland for Anne Arundel County denied the Petitioner his right and opportunity to be heard and to present his case. The

Due Process Clause of the 14th Amendment to the United States Constitution has been reviewed by this Honorable Court in numerous cases. The Court should hold as it held in Truax v. Corrigan, 257 U.S. 312, 42 S. Ct. 124 (1921):

> "The due process clause requires that every man shall have the protection of this day in court, and the benefit of the general law, a law which hears before it condemns, which proceeds not arbitrarily or capriciously, but upon injury, and renders a judgment only after trial, so that every citizen shall hold his life, liberty, and immunities under the protection of the general rules which govern society".

"It is a fundamental tenet of American law that every individual is entitled to his or her day in court". Martin v. Wilks, 490 U.S. 755, 762 (1989) The Supreme Court, in reviewing this case, should find "Where, as here, a possible due process violation is apparent on the particular facts of a case, we are empowered to consider the due process issue" Wood v. Georgia, 101 S. Ct. 1097 (1981)

The Maryland Code, Article 93 § 271, restricts the powers and authority of the Orphans' Court, clearly stating it "shall not, under pretext of incidental power or constructive authority, exercise any jurisdiction not expressly conferred by law". Throughout this estate case, the Orphans' Court of Maryland for Anne Arundel County has lacked jurisdiction and issued Orders so as to force a closure of an estate.

> "As defined in Maryland Rule 5(a), an "action" includes all the steps by which a party seeks to enforce any right in a court of law or equity (emphasis supplied) Proceedings brought in the Orphans' Courts are therefore not "actions" in the strict legal sense of the word. Just as an Orphans' Court may not hear an action against a tort feasor for the decedent's wrongful death, It may not determine a dispute between the estate and a third party over the title to the

> decedent's personal property. Those proceedings are best left for resolution in a forum designed to hear, and which in fact regularly does hear, these somewhat more intricate questions of law. We observe that there is no requirement in this State that the judges of the Orphans' Court be attorneys". "Indeed, it has long been recognized that as a court of special limited jurisdiction, the Orphans' Court must be confined to the express letter of its authority". DeFelice v. Riggs Nat'l Bank, 55 Md. App. 476, 462 A. 2d 88 (1959)

Estate law is governed by Maryland Code, Estates and Trusts. The Personal Representative attempted to sell more property than necessary. There was no actual proof presented by the Personal Representative to the Orphans' Court of Maryland for Anne Arundel County that the selling of the real property was necessary because of the existence of unpaid debts. In fact, the Personal Representative was receiving interest payments on dividends earned and other monies to pay the monthly bills, which did not amount to much since the real property was vacant. The Orphans' Court's Order to sell the real property was not necessary. Under Maryland Code, Article 93 § 305, "Before the court can authorize a sale of personal property it is required to determine the necessity of the application for the sale. The petition should therefore allege such facts as well make the necessity to sell apparent". The Personal Representative attempted to sell more property than necessary.

> "The policy of the law is opposed to the sale of more property of deceased parties, in the hands of executors and administrators, than is necessary to pay debts, and favors a distribution in kind. And in this case no proof was offered to the court Showing that a sale was necessary to pay debts" Evans v. Inglehart, 6 G. & J. 171

One of the principal grounds relied upon for reversal on account of this order is, that it does not appear in the record that the executor exhibited to the orphans' court sufficient

proof of the existence of unpaid debts, which rendered a sale necessary". Lowe v. Lowe, 6 Md. 347

The Petitioner's appeal of the Orphans' Court of Maryland for Anne Arundel County is proper under Maryland Court & Judicial Procedure Code Annotated § 12-303 (3) (1995 Repl. Vol.) because the Order vacated the Orphans' Court prior Order, which served as an injunction, that did not permit the Personal Representative to sell the real property. The Petitioner's appeal is thus from an appealable order.

The Petitioner filed an appeal from the Orphans' Court of Maryland for Anne Arundel County to the Circuit Court of Maryland for Anne Arundel County. The Order of the Orphans' Court authorizing the Personal Representative to sell the real property was a final judgment for which the Petitioner could file an appeal. The Circuit Court erred in not recognizing that the Petitioner had filed a motion to rescind in the Orphans' Court, which was denied by the Court. "A decree became final when motion to rescind had been heard and denied during term at which decree was rendered. A decree which orders an injunction previously granted to restrain the sale of property to be dissolved, and directs the trustees to sell the property according to the deed of trust, and bring the proceeds into court, is a final decree". Washington, G. & A. R. Co. v. Bradleys, 74 U.S. 575, 7 Wall. 575, 19 L. Ed. 274

The only jurisdiction conferred upon the Orphans' Court of Maryland for Anne Arundel County with regard to real estate is to order a sale of realty appraised at not more than $2500 when the personal estate is insufficient to pay the debts. The Circuit Court for Anne Arundel County failed to determine that the Orphans' Court was not presented with proof by the Personal Representative of the existence of unpaid debts, which rendered a sale necessary. The Personal Representative attempted to sell more property than necessary. The Supreme Court should come to the same opinion as did the Court in Forgay v. Conrad, 47 U.S. 201, 6 How 201, 12 L. Ed. 404:

> "We think, upon sound principles of construction, as well as upon the authority of the cases referred to, that such is not the meaning of the Acts of Congress. And when the decree decides the right to the property in contest, and directs it to be delivered, up by the defendant to the complainant, or directs it to be sold, or directs the defendant to pay a certain sum of money to the complainant, and the complainant is entitled to have such decree carried immediately into execution, the decree must be regarded as a final one to that extent, and authorizes an appeal to this court.."

"The rule laid down in Forgay v. Conrad, as to what constitutes a final decree for the purposes of an appeal, recognized as the true rule on the subject". Thomson v. Dean, 74 U.S. 342 "The reasoning in the case just cited fully vindicates this rule, in our judgment, as a sound construction of the acts of Congress relating to appeals, and is sustained by the authority of several decisions". Ray v. Law, 3 Cranch 179

In vacating the circuit court's order of attorney's fees and remanding the case for further proceedings, the Court of Special Appeals did not consider that the Petitioner could not possibly receive a fair and impartial hearing if he was to go back to either the Orphans' Court of Maryland for Anne Arundel County or the Circuit Court of Maryland for Anne Arundel County. This is the reason why the Petitioner was forced to file a Motion for Removal under Maryland Rule 2-505(a), exercising his right to remove his case guaranteed by the Maryland Constitution, Article IV § 8 so as to guarantee impartial administration of justice. The Petitioner presented proof that he cannot have a fair and impartial hearing in these Courts because of the bias demonstrated by these Courts and the evident prejudice against the Petitioner. Even though the Petitioner presented proof that he cannot receive

an impartial hearing, the Courts unjustly denied his Motion for Removal and refused to order the removal of his case.

> "The appellant having filed his suggestion in the manner and form described by the Constitution and Acts of Assembly, the court erred in refusing to order the removal, and the subsequent proceedings were "coram non judice" "That the provisions of Art 10 of the Constitution, upon the filing of the appellant's suggestion for removal, the court below was deprived of all jurisdiction over the suit, except the power to designate to which adjoining county it should be removed; and that judgment subsequently rendered by the court, being without lawful authority must be reversed". Griffin v. Leslie, 20 Md. 15

The Supreme Court must evaluate the role of the lower courts in the Petitioner's estate case and decide some important issues. Can we let the courts take away our rights to be heard? Does a probate court have the authority to force an administration of an estate on its own terms? There is grave injustice in the actions of the Circuit Court and the Orphans' Court of Maryland for Anne Arundel County. The courts main procedural function is to guarantee a "fair trial" not to bar the Petitioner from being heard and presenting his case with the intent of dismissing his case or closing the estate. The public interest is to see that the court system is not persuaded by either party in a litigation. "Where a question was important and recurring, Supreme Court would grant certiorari to resolve it". Glus v. Brooklyn Eastern Dist. Terminal, 79 S Ct. 760, 359 U.S. 231, 3 L. Ed. 2d 770

The Petitioner is asking the Supreme Court of the United States to review the denial of his constitutional rights. These injustices can only be corrected by the Supreme Court of the United States.

CONCLUSION

For all the foregoing reasons, this Petition for Writ of Certiorari should be granted and a Writ of Certiorari should be issued to the Petitioner.

Respectfully submitted,

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APPENDIX

ROBERT E. MEADE	* IN THE
	COURT OF APPEALS
v.	*
	OF MARYLAND
PATRICIA A. MILLER, SUCCESSOR PERSONAL REPRESENTATIVE OF THE ESTATE OF HELEN V. MEADE, et al.	* Petition Docket No. 544 September Term, 2002
	*
	(No. 1342, Sept. Term, * 2001, Court of Special Appeals)

O R D E R

The Court having considered the motion for reconsideration filed, in the above entitled case, it is

ORDERED, by the Court of Appeals of Maryland, that the motion be, and it is hereby, denied.

/s/ Robert M. Bell
Chief Judge

DATE: March 14, 2003

B

ROBERT E. MEADE	*	IN THE
		COURT OF APPEALS
v.	*	
		OF MARYLAND
PATRICIA A. MILLER, SUCCESSOR PERSONAL REPRESENTATIVE OF THE ESTATE OF HELEN V. MEADE et al.	*	Petition Docket No. 544 September Term, 2002
	*	(No. 1342, Sept. Term, 2001, Court of Special Appeals)

O R D E R

Upon consideration of the petition for a writ of certiorari to the Court of Special Appeals, in the above entitled case, it is

ORDERED, by the Court of Appeals of Maryland, that the petition be, and it is hereby, denied as there has been no showing that review by certiorari is desirable and in the public interest.

/s/ Robert M. Bell
Chief Judge

DATE: December 23, 2002

C

ROBERT E. MEADE	*	In the
Appellant	*	COURT OF SPECIAL
v.	*	APPEALS
PATRICIA A. MILLER, SUCCESSOR PERSONAL REPRESENTATIVE OF THE ESTATE OF HELEN V. MEADE et al.	*	No. 1342
	*	September Term, 2001
Appellees	*	

O R D E R

Upon consideration of Appellant's Motion for Reconsideration of this Court's unreported opinion filed on August 26, 2002 in the captioned appeal, it is this 22nd day of October, 2002, by the Court of Special Appeals,

ORDERED that the Motion for Reconsideration is denied.

For a Panel of the Court

CHIEF JUDGE'S SIGNATURE
APPEARS ON ORIGINAL ORDER

CHIEF JUDGE

D

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1342

September Term, 2001

ROBERT E. MEADE

v.

PATRICIA A. MILLER, SUCCESSOR PERSONAL REPRESENTATIVE OF THE ESTATE OF HELEN V. MEADE, et al.

Murphy, C. J.,
Barbera,
Getty, James S.
(Retired, specially assigned),

JJ.

Opinion by Barbera, J.

Filed: August 26, 2002

#C200172141

This estate dispute between the two surviving children of Helen V. Meade ("decedent") requires us to determine whether the Circuit Court for Anne Arundel County erred in denying appellant Robert E. Meade's motion for a continuance , and in granting the motion of Patricia A. Miller (the successor personal representative of the estate of Helen V.Meade), appellee, to dismiss appellant's notice of appeal to the circuit court. [1] Appellant presents the following questions for our review, which we have rephrased slightly:

I. Whether the circuit court erred in refusing to grant a continuance of the motion to dismiss hearing due to the illness of appellant?

II. Whether the circuit court erred in dismissing the notice of appeal thereby depriving appellant of appeal rights and due process?

Appellant raised a third issue in the argument portion of his brief, which notwithstanding his failure to set out as a separate question presented, we will address. [2] That issue is:

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[1] Only the personal representative has filed a brief in this Court. Appellee Roger Meade, appellant's brother, has opted not to file a brief in this Court. He was represented by counsel and participated in the proceedings below.

[2] For much of the litigation in this case, appellant has proceeded pro se. He represents himself in this appeal.

III. Whether the circuit court erred in awarding appellees' attorney's fees?

For the reasons discussed below, we affirm the decisions of the circuit court to deny appellant's motion for a continuance and to dismiss the notice of appeal to the circuit court, but vacate the court's award of attorney's fees and remand for further proceedings on that claim.

FACTUAL BACKGROUND AND LEGAL PROCEEDINGS

The relevant facts are straightforward and, for purpose of this appeal, do not require a lengthy recitation. Decedent executed her will in November 1999. In it, she appointed her sister, Juanita Hundley, as the personal representative of her estate. [3] A short time thereafter, decedent died as a result of injuries she sustained in an automobile accident. She is survived by two sons, appellant and appellee Roger Meade.

On April 9, 2001, the personal representative filed a

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[3] Prior to the filing of appellant's appeal to this Court, Hundley resigned as personal representative. In her place the Orphans' Court for Anne Arundel County has appointed Patricia A. Miller, Esq. as successor representative. This Court, by order of February 25, 2002, granted appellees' notice of substitution of parties.

motion in the Orphans' Court for Anne Aurndel County for authorization to sell certain real property. Decedent and appellant had lived together on this property until the death of decedent. By order of the orphans' court dated July 18, 2000, appellant was allowed to remain living on the property. The April 2001 order, however, rescinded this earlier order and granted the personal representative's motion authorizing her to sell the property and, if she so chose, evict appellant in an effort to distribute the estate of decedent.

Appellant then filed a motion for continuance of the hearing regarding the personal representative's motion. Both counsel for the personal representative and counsel for Roger Meade objected to a continuance. The circuit court denied the continuance and ten days later, on August 30, 2001, the personal representative's motion to dismiss came on for a hearing. Counsel for the personal representative appeared, as did counsel for Roger Meade. Both argued, that no final orders had been entered by the orphans' court from which an

appeal could have been lodged. Appellant did not appear at the hearing. [4]

From the bench, the court granted the personal representative's motion to dismiss and, in addition, awarded attorney's fees to both the personal representative and Roger Meade. That day the court signed an order stating same, which was then appropriately docketed. From that order, appellant noted this timely appeal.

DISCUSSION

I.

We first address appellant's contention that the circuit court abused its discretion in denying his motion for a continuance. This contention will not detain us long. In his answer to the personal representative's motion to dismiss, appellant, appellant requested a "hearing on this matter."

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[4] Appellant avers in his brief that his absence at the August 30, 2001 hearing was due to illness and that "[b]oth attorneys as well as the Court were informed of this prior to the hearing by a fired of the Appellant." The appellate record contains no indication that the circuit court (of the attorneys present at the hearing) had any knowledge that appellant was unable to appear due to illness.

Later, in this motion for a continuance, filed pursuant to Maryland Rule 2-508, appellant averred that "he never intended for [the hearing to be held] separately but be heard at the beginning of the first scheduled hearing in the Circuit Court on September 26, 2001." Appellant, presumably, had an appeal pending on other decisions of the orphans' court.

It is well settled that the circuit court has "wide lattitude in determining whether to grant a continuance." Shpak v. Schertle, 97 Md. App. 207, 225, cert. denied, 333 Md. 201 (1993); accord Hogan v. Eastridge, 260 Md. 136, 138 (1970). The facts in the record sub judice simply do not reflect any circumstances that would have warranted a continuance. There was, thus, no abuse of discretion by the circuit court in denying appellant's request for a continuance.

II.

Appellant next contends that the circuit court erred in granting the personal representative's motion to dismiss his notice of appeal from certain orders of the orphans' court sanctioning him for failure to comply with discovery orders,

and the court's granting of the personal representative's request to sell decedent's home. [5]

The Courts and Judicial Proceedings Article sets forth the manner in which review of decisions of orphans' court may occur. Section 12-502 of that Article provides that "a party may appeal to the circuit court for the county from a final judgment of an orphans' court." Md. Code (1973, 1998 Repl. Vol., 2001 Cum. Supp.) § 12-502 of the Courts and Judicial Proceedings Article. See Anthony v. Clark, 335 Md. 579, 587 (1994). The underlying policy of the final judgement rule is to avoid piecemeal appeals. NRT Mid-Atlantic v. Innovative Properties, 144 Md. App. 263, 274 (2002).

We have explained that "[a] final judgment is any judgment or order which is 'so far final as to determine and conclude the rights involved in the action, or to deny to the

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[5] The record before us contains orders of the orphans' court dated April 5, 2001, and May 7, 2001, but does not contain orders that appellant states were rendered on April 26 or 30, 2001. In any event, appellees do not contest appellant's characterization of the orders, nor is it necessary to our decision that we have those orders before us.

party seeking redress by the appeal the means of further prosecuting or defending his rights and interests in the subject matter of the proceeding.' " Grimberg v. Marth, 338 Md. 546, 551 (1995) (quoting In re Buckler Trusts, 144 Md. 424, 427 (1924). Said differently, "[w] here a trial court's order has ' the effect of putting the [parties] out of court, [it] is a final appealable order.' " Horsey v. Horsey, 329 Md. 392, 401 (1993) (quoting Houghton v. County Comm' rs of Kent Co., 305 Md. 407, 412 (1986)). See also Wright v. Nugent, 23 Md. App. 337, 357 (1974), aff'd, 275 Md. 290 (1975) (holding that orders of the orphans' court that are subject to appeal are final orders that are " ' actually settling the rights of the parties' " (quoting Collins v. Cambridge Maryland Hosp., Inc., 158 Md. 112, 116 (1930)).

Generally, discovery orders, interlocutory in nature, cannot be appealed prior to a final judgment terminating the case. Goodwich v. Nolan, 343 Md. 130, 140 n. 8 (1996); Public Service Comm. Of Maryland v. Patuxent Valley Conservation League, 300 Md. 200, 207 (1984); see, e.g.,

Sigma Repro. Health Cen. V. State, 297 Md. 660, 675 (1983) ("ordinarily an order denying a motion to quash a subpoena duces tecum in a pending case is not an appealable final order"); Price v. Orrision, 261 Md. 8, 9 (1971) (order authorizing plaintiff to take depositions of members of civic association to aid in execution of judgment obtained against association is not an appealable final order). Here, the circuit court properly dismissed appellant's appeal from the orphans' court orders respecting the discovery matters because they were not "final" judgment.

We now turn to appellant's appeal to the circuit court from the orphans' court order authorizing the personal representative to sell the decedent's house. This, too, is not an appealable final judgment.

The orphans' court authorized the personal representative to sell decedent's home, presumably, in accordance with certain provisions of the Estates and Trusts Article, namely, §§ 7-101 and 7-102. Section 7-101 requires a personal representative, serving as a fiduciary, "to settle

and distribute the estate of the decedent . . . as expeditiously and with as little sacrifice of value as is reasonable under the circumstances." Md. Code (1974, 2001 Repl. Vol.), § 7-101(a) of the Estates and Trusts Article. Section 7-102 allows a personal representative to "take possession or control" of a decedent's estate. Md. Code (1974, 2001 Repl. Vol.), § 7-102 of the Estates and Trusts Article. That same statute carves out an exception to this rule, stating that "property in the possession of the person presumptively entitled to it . . . shall be possessed by the personal representative only when reasonably necessary for purposes of administration." Id. Overarching this statutory scheme is the highly desirable policy that there "be a prompt settlement and distribution of decedent's estate" and no "unnecessary delays." Thomason v. Bucher, 266 Md. 1, 4 (1972).

The orphans' court order authorizing the personal representative to sell decedent's home is not an order that acts to put the parties out of court, or settle the rights of the

parties. The order does not, and indeed cannot, preclude appellant from purchasing the home, nor does it foreclose appellant, under the terms of the decedent's will, from receiving proceeds (if any) from its sale. It simply allows the personal representative, within the framework of the Estates and Trusts Article, to perform her duties. We hold that the circuit court properly dismissed appellant's notice of appeal for want of an appealable final judgment.

III.

Appellant also challenges, in the concluding paragraph of his brief, the circuit court's award of attorney's fees to both appellees. The circuit court, presumably, awarded attorney's fees on the basis that appellant's conduct was done either " in bad faith or without substantial jurisdiction, "pursuant to Maryland Rule 1-341. That rule provides:

> In any civil action, if the court finds that the conduct of any party in maintaining or defending any proceeding was in bad faith or without substantial justification the court may require the offending party or the attorney advising the conduct or both of them

> to pay to the adverse party the costs of the proceeding and the reasonable expenses, including reasonable attorney's fees, incurred by the adverse party in opposing it.

The law requires that, before awarding attorney's fees, the court must make an explicit finding that the party against whom fees are to be assessed acted either in bad faith or without substantial justification. Zdravkovich v. Bell Atlantic-Tricon Leasing, Corp., 323 Md. 200, 210 (1991); accord Merriken v. Merriken, 87 Md. App. 522, 546 (1991). Such a finding is a necessary predicate for the imposition of Rule 1-341 sanctions. Zdravkovich, 323 Md. at 210. Moreover, "[d]ue process requires, at a minimum, that before sanctions are imposed pursuant to Rule 1-341, there must be notice and an opportunity to respond." Id. at 209.

There is fair indication in the record that the circuit court intended to make a finding of bad faith or lack of substantial justification, and the court very well may have implicitly so found. At the motions hearing, the circuit court asked counsel for Roger Meade to estimate the amount of

time he had spent preparing for the motions hearing, as well as his hourly rate. Counsel responded that he had spent three hours preparing for the hearing and charges $300.00 per hour. Counsel for the personal representative also informed the court that he requested $500.00 in fees. The circuit court then awarded $500.00 to each attorney, which was $300.00 less than counsel for Roger Meade originally had requested.

All of this occurred without notice to appellant or giving him an opportunity to be heard. Moreover, before awarding attorney's fees the court did not make the explicit finding of bad faith or lack of substantial justification that the law requires. See Merriken, 87 Md. App. At 546 (declining to indulge the presumption that trial courts are presumed to know the law and apply it correctly, and holding that the court's failure to make an explicit finding of appellant's bad faith or lack of substantial justification required reversal of its award of attorney's fees to appellee). Accordingly, we must vacate the circuit court's order of attorney's fees and remand that issue for further proceedings not inconsistent

with this opinion.

JUDGMENT AWARDING ATTORNEY'S FEES TO THE APPELLEES VACATED; JUDGMENT OTHERWISE AFFIRMED; CASE REMANDED FOR FURTHER PROCEEDINGS ON APPELLEE'S CLAIMS FOR ATTORNEY'S FEES.

COSTS TO BE PAID TWO THIRDS BY APPELLANT AND ONE THIRD BY APPELLEES.

MANDATE

Court of Special Appeals

No. 01342, September Term, 2001

Robert E. Meade
vs.
Patricia A. Miller, Successor Personal Representative of the Estate of Helen V. Meade et al.

JUDGMENT: August 26, 2002: Judgment awarding attorney's fees to the appellees vacated; judgment other-wise affirmed; case remanded for further proceedings on appellee's claims for attorney's fees. Costs to be paid two thirds by appellant and one third by appellees.
Unreported opinion by Barbera, J.

September 24, 2002 : Motion for Reconsideration filed by appellant.

October 22, 2002: Motion for Reconsideration denied.

October 22, 2002: Mandate issued.

From the Circuit Court: for ANNE ARUNDEL COUNTY
00C200172141

STATEMENT OF COSTS:

Appellant (s) :

Lower Court Costs-	60.00
Steno Costs of Appellant-	24.00
Filing Fee of Appellant-	50.00
Brief of Appellant-	68.40
Record Extract-	72.00
Reply of Appellant-	72.00

Appellee (s) ;

Brief of Appellee-	133.20

STATE OF MARYLAND, Sct:

I do hereby certify that the foregoing is truly taken from the records and proceedings of the said Court of Special Appeals. In testimony whereof, I have hereunto set my hand as Clerk and affixed the seal of the Court of Special Appeals, this **twenty-second** day of **October 2002**

/s/

Clerk of the Court of Special Appeals

COSTS SHOWN ON THIS MANDATE ARE TO BE SETTLED BETWEEN COUNSEL AND NOT THROUGH THIS OFFICE.

E

ROBERT E. MEADE	* IN THE
Appellant	* CIRCUIT COURT
v.	* FOR
DECISIONS OF THE ORPHANS COURT FOR ANNE ARUNDEL COUNTY, et al.	* ANNE ARUNDEL COUNTY
	* CASE NO. C-2001-72141
	* (Estate No. 45063)
Appellees	

* * * * * * * * * * * * * *

ORDER OF COURT

Personal Representative, Juanita Hundley's Motion to Dismiss Appeal (Counsel appeared for Respondents, Appellant did not appear) having been read and duly considered, it is this 30th day of August, 2001, by the Circuit Court for Anne Arundel County.

ORDERED: that the Notice of Appeal filed by Robert E. Meade on May 7, 2001 be the same is hereby dismissed with costs. Counsel fees are granted to Thomas Aversa Esq. in the amount of $500.00 and counsel fees are granted to Joel Katz, Esq., in the amount of $500.00 to be paid by Robert E. Meade.

/s/
Judge